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No. 80-1676

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

ONE 1976 FORD TRUCK VAN,
Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTION PRESENTED

Can a state court deny standing to challenge a claimed lack of a statutory provision for notice and hearing in a state forfeiture statute on the basis that the owner of the vehicle received actual notice and an opportunity to be heard, and that the state statute has been construed by an intermediate state appellate court as providing for and requiring notice and hearing?

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent Commonwealth of Pennsylvania respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the Opinion of the Supreme Court of Pennsylvania in this case entered on February 5, 1981, and reported at ____ Pa. ____, 424 A.2d 1323 (1981).

JURISDICTION

Respondent questions this Court's jurisdiction to review the decision of the Pennsylvania Supreme Court for the reasons hereinafter stated. The petitioner claims ju-

risdiction under 28 U.S.C. §1257 (3), although his petition in his Statement of Jurisdiction inadvertently and incorrectly refers to 27 U.S.C. §1257 (3).

REASONS FOR DENYING THE WRIT

1. THERE IS NO SUBSTANTIAL FEDERAL QUESTION INVOLVED SINCE THERE IS AN INDEPENDENT STATE GROUND FOR THE DECISION OF THE PENNSYLVANIA SUPREME COURT.

In the opinion herein below, *Commonwealth v. One 1976 Ford Truck Van*, ____ Pa. ____, 424 A.2d 1323, 1324, fn. 2, p.11 of the within petition, the Pennsylvania Supreme Court notes that contrary to petitioner's claim herein that the Pennsylvania state forfeiture statute lacks provisions for notice and a hearing, that Act has been interpreted by the Commonwealth Court of Pennsylvania, a state-wide intermediate appellate court, in *One 1965 Buick 4 Door Sedan v. Commonwealth*, 46 Pa. Cmwlth. 189, 408 A.2d 157 (1979) *Alloc. Den.* (1980), to so require. This interpretation of a state statute should be followed by the Federal Courts, including the United States Supreme Court. See *Fidelity Union Trust Company v. Field*, 311 U.S. 169, 178-79 (1940); *West v. American Telephone and Telegraph Company*, 311 U.S. 223, 237-38 (1940); *Six Companies of California v. Joint Highway Dist. No. 13*, 311 U.S. 180, 188 (1940).

II. PETITIONER, SINCE HE RECEIVED NOTICE AND AN OPPORTUNITY TO BE HEARD, DOES NOT HAVE A SUFFICIENT INTEREST TO SATISFY THE "CASE AND CONTROVERSY" REQUIREMENT OF ARTICLE III OF THE CONSTITUTION.

As noted in *Broadrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973), ". . . under our constitutional system

courts are not roving commissions assigned to pass judgment on the validity of the nation's laws." Since petitioner has not been injured-in-fact, he lacks standing to challenge the Pennsylvania forfeiture statute. See *Eisenstadt v. Baird*, 405 U.S. 438, 443 n.4 (1972); *Doremus v. Board of Education*, 342 U.S. 429, 434 (1952); Annot., Comment Note: *Supreme Court's Views as to Party's Standing to Assert Rights of Third Persons (Jus Tertii) in Challenging Constitutionality of Legislation*, 50 L.Ed. 2d 902; Note, *Standing to Assert Constitutional Jus Tertii*, 88 Harv. L.Rev. 423 (1974); Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court*, 71 Yale L.J. 599 (1962).

III. THE DECISION OF THE PENNSYLVANIA SUPREME COURT COMPORTS WITH CASE LAW OF THIS COURT AS TO BOTH PROCEDURAL DUE PROCESS AND STANDING.

In *Paulsen v. Portland*, 149 U.S. 30, 37 (1893), this Court held that an express statutory provision for notice and hearing are not constitutionally required, since all statutes are *implicitly* subject to the constitutional requirements of procedural due process. Where notice and opportunity to be heard are provided administratively, this is not a matter of grace, but rather in compliance with constitutional mandate.

On Page 7 of his brief, petitioner cites *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 425 (1914), to support his argument that extra-statutory notice cannot be deemed a substitute for due process. It is submitted, first, that this portion of *Coe* was dictum, since the holding there was that notice and opportunity to be heard were required prior to execution on a judgment against a corporation issuing against a stockholder indebted to the corporation on a subscription agreement. Coe, the stockholder, "knew" about the judgment against the corporation, but such knowledge of the existence of the

judgment was not sufficient to permit pre-hearing execution against his assets.

On Page 8 of his brief, petitioner alleges that *Coe* ". . . is still good law," and cites *United States v. Thirty-seven Photographs*, 402 U.S. 363 (1971) in support of the proposition, in the words of petitioner's brief, that:

> "It is only where a forfeiture statute contains an absolute requirement that a . . . forfeiture complaint be filed and hearing held within a specified period of time that such statutes have been constitutionally upheld."

Petitioner has misrepresented the holding of that case, which, it is submitted is in accord with respondent's position, since in *Thirty-seven Photographs*, your Honorable Court "wrote into" the statute, which was silent on the subject, specific time limitations, so the statute would comport with due process.

As noted by Judge Koelsch in *Wiren v. Eide*, 542 F.2d 757, 762-63 (9th Cir. 1976), the dictum of *Coe*, and the holding of several other decisions of this Court therein cited must be read in light of your more recent self-imposed rules of restraint in deciding constitutional questions. See *United States v. Raines*, 362 U.S. 17 (1960).

The most recent statement of the now-applicable rule of this Court found by respondent is in *Jennings v. Mahoney*, 404 U.S. 25, 26 (1971);

> "There is plainly a substantial question whether the Utah statutory scheme on its face affords . . . procedural due process . . . this case does not, however, require that we address that question. The District Court (of the State of Utah) *in fact afforded this appellant such procedural due process*." (Emphasis added).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition should be denied.

DATED: June 25, 1981

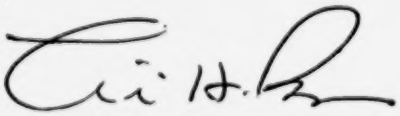
Respectfully submitted:

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PROOF OF SERVICE

I, William H. Platt, Attorney for Respondent herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 25th day of June, 1981, three copies of the foregoing Brief in Opposition to Petition for Certiorari were mailed by first class mail to Alan Ellis, Esquire, Counsel for Petitioner, Suite 2200, 1616 Walnut Street, Philadelphia, Pennsylvania 19103. I further certify that all parties required to be served have been served.



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